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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	No. 2:16-cr-046-GMN-PAL
)	
Plaintiff-Appellee,)	DEFENDANT GREGORY BURLESON'S
)	
vs.)	<u>CORRECTED</u>
)	
GREGORY BURLESON,)	(1) UNOPPOSED MOTION TO UNSEAL
)	CERTAIN DOCUMENTS FOR USE IN
Defendant-Appellant.)	PENDING APPEAL; AND
)	
)	(2) UNSEAL OTHER DOCUMENTS
)	PUBLICLY, AND
)	
)	(3) DECLARATION OF MARK D. EIBERT
)	IN SUPPORT THEREOF

I, Mark D. Eibert, declare as follows:

1. I am an attorney at law duly admitted to the Bar of this Court, and I am the appointed appellate attorney of record for defendant-appellant Gregory Burleson. If called as a witness, I could and would testify to the facts recited in this Declaration from personal knowledge.

2. Mr. Burleson is currently serving a federal prison sentence of 68 years and three months. Sentence was imposed by this Court (the Hon. Gloria M. Navarro) on July 28, 2017. A timely appeal was filed, and I was appointed under the Criminal Justice Act to handle the appeal, Ninth Circuit Case Number 17-10183. That appeal was ultimately stayed and I was appointed to handle Mr. Burleson's motion for new trial and his separately filed motion for compassionate release. Upon the denial of the motion for new trial and part of the motion for compassionate

1 release, a second notice of appeal was filed, Ninth Circuit Case No. No. 21-10183. The two
2 appeals were later consolidated and undersigned counsel is briefing them both.

3 3. I believe the following documents, all of which were filed under seal in the district
4 court, are relevant to and necessary for Mr. Burleson's pending appeal. Although defendants
5 already have copies of most if not all of the following, we need *file stamped* copies of each of
6 them in order to offer them to the Ninth Circuit for its review in our Excerpts of Record. They
7 are:

8 a. The two Wooten memos. The first was filed under seal by the government at
9 E.C.F. No. 2939. The second one was filed under seal at E.C.F. No. 3217. Also I believe at
10 E.C.F. No. 3250, which was defendant Engle's Motion to Depose and Request Documents of
11 Mr. Wooten, as well as filed separately under seal for *in camera ex parte* review by the
12 government in connection with its Motion for Protective Order for March 9, 2018 E-mail
13 Communication, at E.C.F. No. 3216.

14 b. The pleadings, attachments and Order that were filed under seal relating to Mr.
15 Burleson's motion to compel discovery. These are found at E.C.F. Nos. 3461, 3465,
16 3466, 3478, 3476, 3477, 3478, 3479 and 3480.

17 c. The videotape of the Longbow interview of Mr. Burleson and the audiotape of
18 the Caputo telephone call, which were filed with the Court under seal at E.C.F. No. 1072 on
19 December 5, 2016.

20 d. Defendant Ryan Payne's Motion to Dismiss Based on Discovery Provided
21 November 21, 2017, and all Exhibits and attachments thereto, filed under seal at E.C.F. No.
22 2906.

23 e. Defendant Burleson's motion for new trial (at E.C.F. No. 3422, filed January
24 25, 2019) and his reply to the government's response to that motion (E.C.F. No. 3487, filed on
25 February 14, 2020), and the various declarations and exhibits filed therewith, also filed under
26 seal. Undersigned counsel now understands that the motion for new trial and reply were filed
27 under seal unnecessarily, due to counsel's due to a misunderstanding of the Court's prior sealing
28 orders. Undersigned counsel requested at page 23 of the motion for new trial that the Court order

1 the motion and exhibit unsealed. The government's response to that motion was filed *not* under
2 seal. Undersigned counsel therefore respectfully requests that these two documents (and only
3 these documents) be unsealed for all purposes.

4 4. Filed herewith is a proposed Order allowing the documents listed above to be unsealed
5 and file-stamped copies provided by the Clerk to counsel for both parties, with the documents
6 listed in paragraphs 3(a)-(d) be limited to only the use by defendant's appellate counsel, the
7 government's appellate counsel, and appellant, and only for the sole purpose of preparing the
8 appeal. The proposed Order further specifies that if counsel for either party deems it advisable to
9 file any or all of these documents with the Ninth Circuit, they shall be filed under seal with the
10 Ninth Circuit. The Proposed Order further specifies that the documents shall be limited to
11 counsel for both parties and the appellant for this purpose, and prohibits dissemination to anyone
12 else for any other purpose.

13 5. I hereby request that this Court enter an Order unsealing these documents in this case,
14 and directing the Clerk to provide file-stamped copies to counsel for both parties, under the terms
15 set forth above and the proposed Order filed herewith.

16 7. Assistant U. S. Attorney Elizabeth O. White, counsel for the government in both this
17 Court and the pending Ninth Circuit Appeal, has graciously indicated that the government does
18 not oppose this motion.

19 I declare under penalty of perjury under the laws of the United States that the foregoing
20 is true and correct to the best of my knowledge and belief. Executed at Half Moon Bay,
21 California on April 30, 2022.

22 Respectfully submitted,

23 /s/ Mark D. Eibert

24 Mark D. Eibert
25 Attorney for
26 Defendant-Appellant Gregory Burleson
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28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that his business mailing address is P. O. Box 1126, Half Moon Bay, CA 94019, that he is not a party to this action, that he is a citizen of the United States of such age and discretion to be competent to serve papers, and that on the below date he caused a true and accurate copy of

MOTION TO UNSEAL AND PROPOSED ORDER THEREFORE

To be served via ECF on the United States District Court, which will e-serve

Steven Myhre, Esq.
Assistant U.S. Attorney Attorney for Plaintiff
U.S. Attorney's Office
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, NV 89101

ELIZABETH O. WHITE, ESQ. Attorney for Plaintiff
Chief, Appellate Division
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United States Attorney's Office
400 South Virginia Street, Suite 900
Reno, NV 89501

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed on April 30, 2022 at Half Moon Bay, California.

/s/ Mark D. Eibert

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

GREGORY BURLESON,

Defendant-Appellant.

Case No.: 2:16-cr-046-GMN

CORRECTED

[PROPOSED] ORDER TO UNSEAL
DOCUMENTS FOR USE IN PENDING
APPEAL

ORDER

Good cause appearing therefore, it is hereby ORDERED as follows:

1. The sealed documents and video and audio recordings referred to in numbered paragraph 3 (a)-(e) of Defendant's Motion to Unseal Certain Documents For Use in Pending Appeal shall be unsealed for the use of the defendant, his appellate counsel, and government counsel, and the Clerk of the Court shall forward file-stamped copies of each to defense counsel Mark Eibert and government counsel Elizabeth White as soon as practicable. The documents listed in paragraph 3(a)-(d) of the motion shall be used only for the purpose of the preparation, prosecution and defense of Mr. Burleson's Ninth Circuit appeals; the documents listed in paragraph 3(e) shall also be unsealed for all purposes, including on PACER.

2. Dissemination of the documents and recordings in paragraphs 3(a)-(d) shall be limited to the defendant and counsel for both parties in the appeals and solely for the purposes of

1 prosecuting or defending the appeals. Further dissemination to anyone else for any other
2 purpose without prior court order is prohibited.


3 3. Should counsel for either party wish to file any or all of the above documents in the
4 appeal, they shall be filed under seal with the Ninth Circuit.

5 4. The Clerk of the Court shall provide *file stamped* copies all of the above documents
6 and recordings to defense counsel Mark D. Eibert, and to government counsel AUSA Elizabeth
7 O. White, Esq.

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9 **IT IS SO ORDERED.**

10 **IT IS FURTHER ORDERED** that Defendant's [3564]
11 Motion to Unseal is **DENIED as moot.**

12 Dated this 25 day of May, 2022.

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16 Gloria M. Navarro, District Judge
17 UNITED STATES DISTRICT COURT
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